

In Context of Crisis and Corruption, a Transparency Law with No Heart

Helen Darbishire, Executive Director, Access Info Europe explains why the new Transparency and Access to Information Law in Spain is particularly weak, and also maps out the political context in which the law was adopted, seeking to explain why the Spanish Government opted for an instrument which will not empower citizens to obtain the information they need for participation and to hold power to account.

Madrid, 28 November 2013 — The Spanish Government has missed an historic opportunity to adopt an access to information law in line with international standards, instead adopting a law that will have minimal positive impact on open government and do little to change a bureaucratic culture of secrecy in which over 50% of requests from the public go unanswered.[1]

The law, adopted in the Parliament on Thursday 28 November 2013 by 186 votes in favour and 134 against is one of the weakest in the world, entering towards the bottom of the global [Right to Information Rating](#) in position 75 out of 96 countries with access to information laws, based on a score of 68 points out of 150.

The law is even worse than the low RTI Rating score indicates: an exceptional restriction on the information which can be requested has plucked the heart out of the law.

Specifically, requests will be rejected if they are for access to "*opinions, summaries, and communications and reports internal to or between administrative organs or bodies.*" [2]

This is perhaps the worst of a series of problems with the law because it so radically reduces its scope, undermining the potential of the law to provide citizens with an effective tool to find out what goes on in government day-by-day and how and why decisions are taken.

This provision is also a clear and deliberate rejection of the standards in the Council of Europe Convention on Access to Official Documents and means that Spain would not be able to ratify this Convention.

The transparency law is further limited by not applying to most of the information held by the legislative and judicial branches. These shortcomings are compounded by the possibility of administrative silence, an excessively broad exception protecting decision making, and an unequal balance with the fundamental right to privacy.

Spain's Culture of Secrecy

All in all, Spain's new Access to Information Law is a huge disappointment after seven years of campaigning, but it is not surprising, particularly with the Government plagued by corruption charges and besieged by the challenges of dealing with the financial crisis.

Just in the past week, an investigating magistrate confirmed without doubt that the ruling *Partido Popular (PP)* for years ran a secret double accounting system from which it generated a slush fund to make non-taxed payments to party officials. Such scandals add insult to injury for Spanish citizens who have seen wages cut, taxes rise, and are suffering a unemployment rate of 27% with over 50% of young people out of work and many leaving to find work abroad.

In another case this week, PP politician and former chief of Castellón province, Carlos Fabra, infamous for building an airport which has not yet seen an aeroplane but which features a large statue in his honour, received a jail term of four years for defrauding the tax office. There are multiple cases of large-scale corruption linked to the political elite still being processed by the courts. The government's approach has to been to bury its head in the sand, denying all accusations at least until there is a ruling by a court.

Various sectors of society are protesting about cuts to and reforms of services, including mass protests by the movements or "tides" (*mareas* in Spanish) of those working in or concerned about education (the "Green Tide"), health (the "White Tide"), social services (the "Orange Tide") and those forced to move abroad to find work (the "Grenadine Tide" named after the colour of European passports).

Active protests earlier this year outside politicians' homes by those affected by the mortgage crisis along with videos circulating on the internet of police beatings of protesters prompted in November 2013 a proposed new law on "Citizen Security" which initially established fines of up to €600,000 for unauthorised protests in key sites such as outside the Parliament. The outrage at this figure cause the government to revise it town to €30,000 in late November, a relatively meaningless change since both amounts have a clear chilling effect on the right to assembly and freedom of expression. Fines for filming or taking pictures of police officers when asked to desist are also up to €30,000.

What is at stake with these reforms is the ability of citizens to express their discontent and to expose violations of their rights when they exercise their objection to government policies. In that sense, some core principles of a democratic society are currently at play in Spain.

Open What?

In this context of scandals and social discontent, the Spanish Government has shied away from introducing a genuine instrument to open up government, in spite of promises to the public and to international bodies such as the Open Government Partnership to introduce a progressive law reflecting the concerns of the citizens.

The legislative process on the Transparency and Access to Information Law highlighted this lack of political will to embrace openness: the Government avoided genuine dialogue with civil society – the transparency platform the *Coalición Pro Acceso* has not had a meeting with the Government since March 2012 – and there has not been any official response to the one brief public consultation held over the law.

Experts convened to provide input were not given feedback about how their comments had been taken into account, with the final text of the law making clear that they were not. Leaked documents reveal that most of the public contributions recommended to the

government that it should recognise a fundamental right of access to information, something it has refused to do.

Refusal to Recognise the Right to Information

The refusal to take into account international standards on the right of access to information is another feature of the increasing insularity of the Spanish Government.

There was an obstinate refusal to recognise that this right has been determined to be part of the fundamental right to freedom of expression, with a deliberate decision to ignore the jurisprudence of the European Court of Justice and the opinions of the UN Human Rights Committee and various other specialist bodies. The Government did not address the specific concerns raised with it on this point by the Organization for Security and Cooperation in Europe (OSCE).

Access Info Europe will continue to press for access to information to be recognised as a fundamental right in Spain. We have two cases which have not been admitted by the Spanish Constitutional Court – they were rejected on the grounds that no right had been violated when the right to ask for information was denied – and we are preparing an appeal to the European Court of Human Rights in Strasbourg. We are also considering a challenge to the Constitutionality of the newly adopted law.

By not recognising the right of access to information as a fundamental right, the Spanish government has been able to introduce a narrowly framed law which puts a series of obstacles in the way of people seeking to exercise the right.

One year, two years, waiting to ask

How valuable the law will be in securing information will not be known for at least a year, as it does not come into force until the end of 2014 and for the regional level (Autonomous Communities) not until late 2015.

Access Info Europe will continue to work to secure greater transparency before that, including by pressing for the full proactive publication of all information to be placed on the Government's new Transparency Portal and monitoring compliance with the proactive provisions in the law.[3]

We will also continue to encourage the public to demand information, making use of the web platform Tuderechoasaber.es (Your Right to Know) based on [mySociety's Alaveteli software](#) and run with our strategic partner, [Fundación Civio](#), and will monitor and campaign on levels of responsiveness.

Last but not least, we will draw lessons and strength from other access to information campaigns around the world, such as Croatia where the law was recently strengthened to establish an Information Commissioner 10 years after first being adopted, and Mexico which is currently in the process of reinforcing its 2002 Federal Transparency Law, with improvements which include ensuring the full autonomy of the Federal Institute for Access to Information and Protection of Data (IFAI).[4]

[1] TDAS reference <http://blog.tuderechoasaber.es/informe/>

[2] Article 18 of the law

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-19-8.PDF

[3] On 12 November 2013, the Vice-President of the Government announced that the Programme of the State Secretariat of Parliamentary Relations is raising its expenses and investment budget by €1.4 million to pay for the implementation of the Transparency Act. See here

http://www.lamoncloa.gob.es/IDIOMAS/9/Gobierno/News/2013/20131112_SaenzSanta maria_transparency.htm

It is not clear how much if any of these funds will be for the Transparency Council as these are not mentioned in the statement

[4] Details of the reforms in Croatia can be found on Freedominfo.org here:

<http://www.freedominfo.org/regions/europe/croatia/> and in Mexico here:

<http://www.freedominfo.org/2013/11/mexican-house-passes-foi-law-modifications/>

The Mexican reforms will permit extend the Law to include for the first time unions, companies, political parties, and any organization that receives public resources, allowing for citizens to send information requests directly to these bodies, something which will not be possible in Spain with its new law.